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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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08/73001,752 07/25/97 MUNSTER

4 10

EXAMINER

HMD2/0416

THE EXAMINER

CLEAR SILENCE 5-119  
3633 LAKESIDE DRIVE  
FULTON CITY GA 30050

ART UNIT PAPER NUMBER

1604

4

DATE MAILED:

04/16/98

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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- Responsive to communication(s) filed on \_\_\_\_\_
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- Claim(s) 1 To 20 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1 To 20 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of Reference Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). 2+3
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 to 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sueoka et al or Starrett et al in combination with Berge et al. The basic compounds are shown to be known by the two primary references. Berge et al teaches that the conversion of a compound to its salt form may enhance its activity. Fumaric acid is disclosed by Berge et al as one of the known compounds useful in preparing salts. It would be obvious to one skilled in the art given the teaching of Berge et al to try to enhance the properties of the compounds of the two primary

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references by forming the corresponding salt of the compound. The selection of the instant fumaric acid is considered to be obvious absent evidence that the instant salt possesses unexpected properties. The use of the compound for the treatment of a virus is also considered to be obvious since the base compound has the same use.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited by applicants' are made of record

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Reamer whose telephone number is (703) 308-4461.

*James H. Reamer*  
JAMES H. REAMER  
PRIMARY EXAMINER  
GROUP 1600 - ART UNIT 1614

JHR

April 14, 1998